

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.380/2001

New Delhi, this 8th day of January, 2002

Honble Shri Justice Ashok Agarwal, Chairman
Honble Shri M.P.Singh, Member(A)

Lakhan Singh
Flat No.105, Pocket D/12
Sector 7, Rohini, Delhi .. Applicant

(By Shri M.L.Sharma Advocate)

versus

Union of India, through

1. Secretary (Establishment)
Ministry of Railways
Rail Bhavan, New Delhi
2. General Manager
Northern Railway
Baroda House, New Delhi .. Respondents

(By Shri R.L. Dhawan, Advocate)

ORDER(oral)

By Shri M.P. Singh, Member(A)

The applicant by filing this OA has ^{sought} direction to the respondents to set aside the order dated 8.8.2000 and to consider him for promotion to the post of Chief Office Superintendent (COS, for short) in the pay scale of Rs.7450-11500 retrospectively from 10.5.98 with all consequential benefits including retiral benefits.

2. The applicant was originally appointed as Clerk on 18.4.63 in the Medical Branch of Northern Railway Hqr., New Delhi and subsequently promoted as OS Gr.I (Rs.2000-3200) in the year 1994. On the basis of his seniority, applicant was due for next promotion to the higher post of COS w.e.f. 10.5.98. As per the recommendation of 5th Pay Commission, three posts of COS have been sanctioned in the Medical Branch of NR Hqrs.. Although the post of COS has been classified as a selection post ^{but} after considering the demand of

Departmental Council under JCM, the Railway Board as a measure of immediate relief to the staff and to avoid delay have decided to fill up these posts through the process of modified selection i.e. by scrutiny of service records only as a one-time exception. The contention of the applicant is that if seniority is revised in pursuance of the judgement of Supreme Court in the case of Ajit Singh II Vs. State of Punjab, he would stand senior most in the feeder grade of OS Gr.I. Even if non-revision of seniority, the applicant holds his position in the feeder grade at Sl.No.3. Applicant had made representations on 6.11.2000, 24.11.2000 and 10.1.2001 but the same have been rejected by the respondents. Aggrieved by this, he has filed this OA seeking the aforesaid reliefs.

3. Respondents in their reply have stated that the post of COS has been created with effect from 10.5.98 but the same has been classified as selection post. It is also stated by them that the post of COS is to be created on functional considerations and such post may be pin-pointed and should include duties of higher importance. These instructions further provide that benefit of new pay scale of COS will become admissible only to duly selected staff and that too after they move to the pin-pointed post. The benefit of upgrade post of COS cannot be allowed to retired persons either on proforma or actual basis as the posts have been upgraded on functional considerations and the retired staff have not discharged duties of the posts of higher grade.

4. Heard the learned counsel for the rival contesting parties and perused the records.

ml

5. The learned counsel for the applicant submitted the post of COS has been created on the recommendations of the 5th Pay Commission w.e.f. 10.5.98 and was required to be filled from the same date. He drew our attention to the instructions issued by Railway Board dated 10.5.98 and stated that as a result of introduction of additional pay scale of Rs.7450-11500 as COS in the cadre of Ministerial staff, Medical Branch, Northern Railway [&] and as per recommendations of 5th Pay Commission which were made effective from 10.5.98, ~~he~~ he is entitled to the benefit of higher post from that date. In support of his claim, he has relied upon the judgement of this Tribunal dated 5.11.2000 in OA No.2051/1999 wherein in a similar case this Tribunal has allowed the benefit of upgraded post to the retired person.

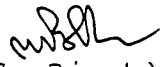
6. On the other hand, the learned counsel for respondents drew our attention to the instructions issued by Railway Board (R-1) to para 5.2(b) of letter dated 10.5.98 which specifically states that since the posts are being created on functional considerations, such posts should be pin-pointed and should include duties of higher importance. The benefit will become admissible only to the duly selected staff and that too after they move to the pin-pointed posts. He further submitted that since the applicant has retired and has not performed the duties of higher post, he is not entitled to the benefit of higher post of COS.

[Signature]

7. The learned counsel for the applicant drew our attention to the judgement dated 1.12.2000 in the case of M.G.Badappanavar & Anr. Vs. State of Karnataka & Ors. JT 2000(suppl.3) SC 408. In that case the apex court has held as under:

"19. In fact, some general candidates who have since retired, were indeed entitled to higher promotions, while in service if Ajit Singh II is to apply, they would, get substantial benefits which were unjustly denied to them. The decision in Ajit Singh II is binding on us. Following the same, we set aside the judgement of the Tribunal and direct that the seniority lists and promotions be reviewed as per the directions given above, subject of course to the restriction that those who were promoted before 1.3.96 on principles contrary to Ajit Singh II need not be reverted and those who were promoted contrary to Sabharwal before 10.2.95 need not be reverted. This limited protection against reversion was given those reserved candidates who were promoted contrary to the law laid down in the above cases to avoid hardship".

8. The instant ^{case} is covered by the ratio laid down in the aforesaid case. In view of law laid down in the aforesaid judgement, we allow this OA and direct the respondents to consider the case of the applicant's promotion to the post of COS in accordance with rules and instructions on the subject w.e.f. 10.5.98 and grant him all consequential benefits including retiral benefits if he is so entitled. This should be done within a period of three months from the date of receipt of a copy of this order. No costs.


(M.P. Singh)
Member(A)


(Ashok Agarwal)
Chairman

/gtv/